

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

DATE 4/27/2023

DISTRICT JUDGE
Amos L. Mazzant, III

COURT REPORTER: Chris Bickham
COURTROOM DEPUTY: Keary Conrad

UNITED STATES OF AMERICA

V.

CASE NUMBER 4:20CR212

DEBRA MERCER-ERWIN (1)

| ATTORNEY FOR GOVERNMENT | ATTORNEY FOR DEFENDANT |
|---|--------------------------------------|
| Ernest Gonzalez, Heather Rattan and Lesley Brooks, AUSA | Matthew Cyran, Joe White, Kate White |

On this day, came the parties by their attorneys and the following proceedings were held in Sherman, TX:

| TIME: | MINUTES: Jury Trial – Day 12 |
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| 8:05 a.m. | Court in session. Court notes appearance of counsel. |
| 8:08 a.m. | Court hears from Defendant's counsel regarding offer of proof of Gary Evans. Defendant's counsel calls Gary Evans. Witness placed under oath. Defendant's counsel, Joe White begins questioning of Gary Evans. No response or argument necessary from Government. Court will not allow witness to testify in front of jury. |
| 8:23 a.m. | Witness excused. |
| 8:24 a.m. | Jury seated. |
| 8:26 a.m. | Witness, Scott McCreary is reminded he is still under oath. Defendant's counsel, Joe White continues direct examination of Scott McCreary. |
| 9:01 a.m. | Defendant's counsel, Joe White moves for the admission of Defendant's Exhibit 8b. No objection. Defendant's Exhibit 8b is admitted. |
| 9:08 a.m. | Defendant's counsel, Joe White offers Defendant's Exhibit 8d pgs. 43-86. No objection. Defendant's Exhibit 8d, pgs. 43-86 is admitted. |
| 9:40 a.m. | Pass the witness. Government AUSA Ernest Gonzalez begins cross examination of Scott McCreary. |
| 10:14 a.m. | Government AUSA Ernest Gonzalez offers Government Exhibit 127. No objection. Government Exhibit 127 is admitted. |
| 10:21 a.m. | Bench conference at request of Defendant. |
| 10:22 a.m. | Government AUSA Ernest Gonzalez continues cross examination of Scott McCreary. |
| 10:25 a.m. | Pass the witness. Jury recess for break. |
| 10:26 a.m. | Court recess for 15 minutes. |
| 10:42 a.m. | Court re-convened. Jury seated. |
| 10:43 a.m. | Defendant's counsel, Joe White begins re-direct examination of Scott McCreary. |

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| 11:01 a.m. | Pass the witness. Government AUSA Ernest Gonzalez begins re-cross examination of Scott McCreary. |
| 11:11 a.m. | Pass the witness. Witness subject to recall. |
| 11:11 a.m. | Defendant's counsel, Joe White calls Debra Mercer-Erwin. Witness placed under oath. Defendant's counsel, Joe White begins direct examination of Debra Mercer-Erwin. |
| 11:27 a.m. | Defendant's counsel, Joe White offers Defendant's Exhibits 12a, 12b, 12c, 12d. No objection. Defendant's Exhibits 12a, 12b, 12c, 12d are admitted. |
| 11:43 a.m. | Jury excused for lunch. Court recess for lunch. |
| 12:45 p.m. | Court re-convened. |
| 12:47 p.m. | Court inquires of Defendant regarding her rights to not testify. Defendant confirms she wants to waive her rights and testify. |
| 12:48 p.m. | Jury seated. |
| 12:49 p.m. | Defendant's counsel, Joe White continues direct examination of Debra Mercer-Erwin. |
| 1:03 p.m. | Defendant's counsel, Joe White moves for the admission of Defendant's Exhibit 308. No objection. Defendant's Exhibit 308 is admitted. |
| 1:56 p.m. | Defendant's counsel, Joe White moves for the admission of Defendant's Exhibits 16, 16a, 16b. No objection. Defendant's Exhibits 16, 16a, 16b are admitted. |
| 1:57 p.m. | Defendant's counsel, Joe White moves for the admission of Defendant's Exhibit 306 (9 pages). No objection. Defendant's Exhibit 306 is admitted. |
| 2:07 p.m. | Defendant's counsel, Joe White moves for the admission of Defendant's Exhibits 13a, 13b. No objection. Defendant's Exhibits 13a, 13b are admitted. |
| 2:25 p.m. | Defendant's counsel, Joe White moves for the admission of Government Exhibit 52b. No objection. Government Exhibit 52b is admitted. |
| 2:32 p.m. | Defendant's counsel, Joe White moves for the admission of Defendant's Exhibits 1a, 1b, 1d. |
| 2:33 p.m. | Bench conference at request of Government. |
| 2:35 p.m. | No objection. Defendant Exhibits 1a, 1b, 1d are admitted. |
| 2:39 p.m. | Defendant's counsel, Joe White moves for the admission of Government Exhibit 56b (pg. 1). No objection. Government Exhibit 56b (pg. 1) is admitted. |
| 2:40 p.m. | Defendant's counsel, Joe White moves for the admission of Defendant's Exhibits 5a, 5b. No objection. Defendant's Exhibits 5a, 5b are admitted. |
| 2:50 p.m. | Defendant's counsel, Joe White moves for the admission of Defendant's Exhibit 5d. No objection. Defendant's Exhibit 5d is admitted. |
| 2:52 p.m. | Defendant's counsel, Joe White uses Government Exhibit 58b as demonstrative only. |
| | Defendant's counsel, Joe White moves for the admission of 7a, 7c. No objection. Defendant's Exhibits 7a, 7c are admitted. |
| 3:00 p.m. | Defendant's counsel, Joe White uses Government Exhibit 53C as demonstrative only. |
| 3:01 p.m. | Court inquires as to co-defendants to be removed from 5 th Superseding Indictment. Defendant objects. Court overrules Defendant's objection. |
| 3:02 p.m. | Court recess for 15 minutes. |
| 3:17 p.m. | Court re-convened. Parties discuss December 18 th interview audio versus transcript going back to jury. Audio only will be submitted to the jury – no transcript. |
| 3:20 p.m. | Jury seated. |
| 3:21 p.m. | Defendant's counsel, Joe White continues direct examination of Defendant Debra Mercer-Erwin. |

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| 3:25 p.m. | Defendant's counsel, Joe White offers Defendant's Exhibit 2a. Government AUSA Lesley Brooks takes witness on voir dire and objects to exhibit. Defendant's counsel offers Defendant's Exhibit 2a. Government objection to authentication and foundation. |
| 3:29 p.m. | Defendant's counsel, Joe White offers Defendant's Exhibit 2a. Government objects. |
| 3:30 p.m. | Defendant's counsel, Joe White offers Defendant's Exhibit 2a. Government objects to foundation. Court sustains Government's objection. |
| 3:33 p.m. | Defendant's counsel, Joe White offers Defendant's Exhibit 2b. Government objects to proper foundation. |
| 3:33 p.m. | Defendant's counsel, Joe White offers Defendant's Exhibit 2b. Government continues to objects to proper foundation of business record and hearsay. |
| 3:43 p.m. | Defendant Joe White offers Defendant's Exhibit 3a. Government AUSA Lesley Brooks takes the witness on voir dire. Government objects to proper foundation. |
| 3:48 p.m. | Defendant Joe White offers Defendant's Exhibit 3a, 3c. Government objects to proper foundation as to 3a; as to 3c Government objects to foundation and hearsay. |
| 3:51 p.m. | Defendant Joe White offers Defendant's Exhibit 3c. No objection. Defendant's Exhibit 3c is admitted. |
| 4:03 p.m. | Defendant's counsel, Joe White offers Defendant's Exhibit 3a. Government objects that this witness cannot lay the proper foundation because it was before the Defendant purchased the business and Defendant has no knowledge as to who made the records; therefore proper foundation not laid. Court conditionally admits Defendant's Exhibit 3a. The Court will admit them as demonstrative if not fully admitted. |
| 4:21 p.m. | Defendant's counsel, Joe White offers Defendant's Exhibit 3e. Government objects that the proper foundation has not been laid regarding when made, how maintained, who made them and the fact that they were made prior to her taking over the business. |
| 4:23 p.m. | Defendant's counsel, Joe White offers Defendant's Exhibit 3e. Court overrules the objection and will double check the issue and conditionally admits Defendant's Exhibit 3e. |
| 4:30 p.m. | Defendant's counsel, Joe White offers Defendant's Exhibit 3d pg. 11. No objection. Defendant's Exhibit 3d pg. 11 is admitted. |
| 4:58 p.m. | Defendant's counsel, Joe White moves for the admission of Defendant's Exhibit 6b. No objection. Defendant's Exhibit 6b is admitted. Defendant's counsel, Joe White moves for the admission of Defendant's Exhibit 6d. Government AUSA Lesley Brooks takes the witness on voir dire. Government AUSA Lesley Brooks objects to foundation and dates of documents. Defendant's counsel, Joe White asks further questions. Defendant's counsel, Joe White offers Defendant's Exhibit 6d excluding the OFAC (pages 12-17). No objection by the Government. Defendant's Exhibit 6d (excluding pgs 12-17) are admitted. |
| 5:00 p.m. | Defendant's counsel, Joe White offers Defendant's Exhibit 307. No objection. Defendant's Exhibit 307 is admitted. |
| 5:01 p.m. | Jury excused. |
| 5:02 p.m. | Government requests Jencks regarding witness Debra Mercer-Erwin including any text messages or emails with co-conspirators; anything not protected by attorney-client privilege. |

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| 5:05 p.m. | Court will meet with attorneys in chambers for informal charge conference. |
| 5:05 p.m. | Court adjourned. |
| | Govt Exhibits Admitted: 52b, 56b, 127 Demo Only: 53c, 58b Conditionally Admitted: Dft 3a, 3c, 3e Deft Exhibits Admitted: 1a, 1b, 1d, 3c, 3d pg. 11, 5a, 5b, 5d, 6b, 6d (excluding pgs. 12-17), 7a, 7c, 8b, 8d pgs. 43-86, 12a, 12b, 12c, 12d, 13a, 13b, 16, 16a, 16b, 306, 307, 308, |

DAVID O'TOOLE, CLERK

BY: Keary Conrad

Courtroom Deputy Clerk